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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,695	07/01/2005	Attila Herczeg	PB0224	9144

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EXAMINER	
MENON, KRISHNAN S	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
05/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,695	HERCZEG, ATTILA	
	Examiner	Art Unit	
	Krishnan S. Menon	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *25 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,4,6,7 and 10-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,4,6,7 and 10-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 2,4,6,7 and 10-12 are pending as amended 3/25/08; claim 12 is independent.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The filtrate apertures recited in these claims have no antecedent basis.

Claim Rejections - 35 USC § 102

1. Claims 2 and 12 are rejected under 35 U.S.C. 102(a/b) as being anticipated by Schmidt et al (US 6,916,420), OR Rogemont (US 4,701,234) OR Applicant's own admission, figures 1,3 and 4 of the disclosure; Claim 12 is anticipated by Grummert, et al (US 6,368,505).

Please note that the US Patents to Grummert and Schmidt cited herein have PCT publications with earlier dates. These references teach the claimed invention – see the figures. They all have the feed, retentate and permeate passages sealed by resins that extend into the holes as well as to the periphery of the holes.

FIGURE 6

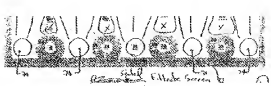


FIGURE 4
(Prior Art)

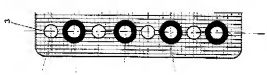
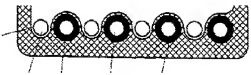
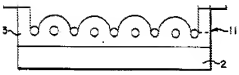


Fig.1.1





Grummert

Schmidt

Rogemont

Pictures from applicant's disclosure, disclosed prior art, Grummert, Schmidt and Rogemont (in that order, from left to right) showing the permeate screen. All of them show the resin layer around the feed/retentate hole penetrating the screen material. They do not appear to form any non-uniformities in fluid flow therethrough. Particularly, compare the similarity of applicant's figure 13 to that of Rogemont. The resin layer is taught as penetrating across the screen layer in all the cited references.

Regarding the non-permeable films and the housing, these are parts present in all the prior arts, as admitted by the applicant (see disclosed fig 1). All the references cited teach improvements over the prior arts specific to the feed and/or filtrate screens and/or to the feed, retentate and filtrate apertures and the perimeters of the screens.

A contiguous border is formed at least in Rogemont – (resin layers 3 and 4 in figure 3 – see column 3, line 60 – column 4, line 15), and penetrate the screen evenly –

figure 5. Schmidt teaches the same in column 1, lines 16-36. The cross-hatched perimetrical region on Schmidt figure shown above is a solid frame for the screen. Applicant's disclosure of the prior art also shows this contiguous resin border with the perimeter of the holes.

2. Claims 4 is rejected under 35 U.S.C. 102(a/b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over, Grummert, et al (US 6,368,505) OR Schmidt et al (US 6,916,420) OR Rogemont (US 4,701,234) OR Applicant's own admission, figures 1,3 and 4 of the disclosure.

Claim 4 adds limitations pertaining to the method of making the cassette, which is not patentable - "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re *Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

3. Claims 6,7,10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grummert, et al (US 6,368,505) OR Schmidt et al (US 6,916,420) OR Rogemont (US 4,701,234) OR Applicant's own admission, figures 1,3 and 4 of the disclosure.

These claims recite the shape of the apertures with respect to their symmetry about several axes. The references do not specify any particular shape for the apertures except that they are shown circular. However, a difference in the shape of the apertures without any showing of secondary evidence of patentability, is not considered as a patentable difference. Changes of size, shape, etc without special functional significance are not patentable. Research Corp. v. Nasco Industries, Inc., 501 F2d 358; 182 USPQ 449 (CA 7), cert. denied 184 USPQ 193; 43 USLW 3359 (1974)In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant.).

Response to Arguments

Applicant's arguments filed 3/25/08 have been fully considered but they are not persuasive.

Arguments are not commensurate in scope with the claims and the rejection. The argument that the references do not teach using a sealing resin in order to eliminate the non-uniformities in fluid flow is not persuasive because the structure claimed is taught by the references.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Krishnan S Menon/
Primary Examiner, Art Unit 1797